

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVIS INTERNATIONAL, LLC, HOLDEX, LLC,:
FOSTON MANAGEMENT, LTD, and :
OMNI TRUSTHOUSE, LTD, :

Plaintiffs, :

v. : No. 04-1482-GMS

NEW START GROUP CORP., VENITOM CORP.,:
PAN-AMERICAN CORP., MDM BANK,
URAL-GORNO METALURAGICAL COMPANY,:
EVRAZ HOLDING, MIKHAIL CHERNOI,
OLEG DERIPASKA, ARNOLD KISLIN,
MIKHAIL NEKRICH, and ISKANDER
MAKMUDOV,

Defendants. :

**AFFIDAVIT OF CHARLES M. OBERLY, III
SUBMITTING DECLARATIONS IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

STATE OF DELAWARE)
)
) ss.
COUNTY OF NEW CASTLE)

Charles M. Oberly III, first being duly sworn, hereby deposes and says:

1. I am member of the Bar of the State of Delaware and an attorney with Oberly Jennings & Rhodunda, P.A., local counsel for defendants Arnold Kislin, Mikhail Chernoi, Iskander Makmudov, Ural-Gorno Metallurgical Company, Mikhail Nekrich, New Start Group Corp. and Venitom Corp.

2. I submit this Affidavit on behalf of all defendants in this action to outline the motion to dismiss the complaint being filed herewith by defendants and to submit certain declarations and exhibits relevant to defendants' motion. Any statements

or omissions by the defendants notwithstanding, it is the intention of each defendant to join in the motion and briefs of the other defendants.

3. Submitted contemporaneously with this Affidavit are a motion to dismiss and opening briefs on the following grounds:

- A. Direct Estoppel and Injunction – motion to dismiss pursuant to the doctrine of direct estoppel and to enjoin plaintiffs from re-filing this action.
- B. Forum Non Conveniens – motion to dismiss on the grounds of *forum non conveniens*.
- C. Comity - motion to dismiss on the grounds of international comity.
- D. Failure to State a Claim - motion to dismiss for lack of subject matter jurisdiction over the RICO claims and pursuant to Rule 12(b)(6) for failure to state a claim.

4. Annexed hereto as Exhibit 1 is the Declaration of Lisa C. Cohen, counsel to defendant Arnold Kislin, which is relevant to defendants' motion to dismiss the complaint pursuant to the doctrine of direct estoppel and to enjoin plaintiffs from re-filing this action. Should this Court dismiss the complaint upon this ground, it is unnecessary to reach any other ground.

5. Annexed hereto as Exhibits 2 and 3 are the Expert Declaration of Professors Paul B. Stephan III and Sergei Nikolaevich Lebedev, which are relevant to defendants' motion to dismiss on the basis of *forum non conveniens* and comity.

6. Annexed hereto as Exhibit 4 is the Declaration of Peter J. Venaglia, counsel to New Start Group Corp. and Venitom Corp., which is relevant to defendants' motion to dismiss on the basis of *forum non conveniens* and comity.

7. Annexed hereto as the exhibit numbers indicated below are declarations from each defendant's counsel, which, for purposes of the *forum non conveniens* motion: (a) consent to the jurisdiction of the Russian courts in any action filed by plaintiffs alleging the same or similar claims asserted in the complaint; (b) agree to produce any relevant documents or witnesses in Russia; (c) consent to any venue in Russia that may be selected by plaintiffs; and (d) waive any defense based on any statute of limitations which may have expired after the filing of the complaint herein (November 4, 2004) until 90 days after judgment in this case becomes final:

| | |
|------------|--|
| Exhibit 5 | Declaration of Richard J. Schaeffer on behalf of New Start Group Corp. and Venitom Corp. |
| Exhibit 6 | Declaration of Joel B. Kleinman on behalf of MDM Bank. |
| Exhibit 7 | Declaration of William H. Devaney for Ural-Gorno Metallurgical Co. |
| Exhibit 8 | Declaration of David H. Herrington on behalf of Evraz Holding. |
| Exhibit 9 | Declaration of Brian E. Maas on behalf of Mikhail Chernoi. |
| Exhibit 10 | Declaration of Michael G. Biggers for Oleg Deripaska. |
| Exhibit 11 | Declaration of Lisa C. Cohen on behalf of Arnold Kislin. |
| Exhibit 12 | Declaration of Paul R. Grand on behalf of Mikhail Nekrich. |
| Exhibit 13 | Declaration of William H. Devaney for Iskander Makmudov. |

8. Submitted contemporaneously with this Affidavit is a thirteen-volume Appendix, which includes the exhibits which are referred to in defendants' opening briefs. References in the briefs to the Appendix appear as A-___.

9. Also submitted contemporaneously is a Compendium of Unreported Cases cited in the opening briefs.

FURTHER AFFIANT SAYETH NOT.


Charles M. Oberly, III

Sworn to and subscribed before me
this 30th day of March, 2005.


Karen Dubois

Notary Public